

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA**

DIANA MEY, )  
Individually and on )  
behalf of a proposed class, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ALL ACCESS TELECOM, INC., )  
BANDWIDTH INC., )  
CENTURYLINK COMMUNICATIONS., )  
LLC, d/b/a Lumen Technologies, )  
LEVEL 3 COMMUNICATIONS, LLC, )  
d/b/a Lumen Technologies, )  
INTELIQUENT, INC.; )  
NOS COMMUNICATIONS, INC., and )  
TELIAX, INC. )  
 )  
Defendants. )

Case No.: 5:19-CV-00237-JPB

**BANDWIDTH INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Pursuant to Federal Rules of Civil Procedure 12(b)(6) Defendant Bandwidth Inc.

("Bandwidth"), by and through counsel, respectfully moves this Court to dismiss Count One of the Third Amended Complaint filed by Plaintiff Diana Mey ("Plaintiff"). Bandwidth also joins in, and incorporates by reference herein, the Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) filed by co-defendants CenturyLink Communications, LLC and Level 3 Communications, LLC (the "Lumen Defendants") (Dkt. 41, 42).

As explained more fully in Bandwidth's Memorandum in Support of its Motion to Dismiss, Plaintiff's claim against Bandwidth should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff has not alleged facts from which it can plausibly be inferred that an automated telephone dialing system ("ATDS") was used for the calls allegedly implicating Bandwidth. Plaintiff's sole allegations are that 1) Bandwidth played a role in

transmitting two calls; 2) these calls appeared from an eleven-digit number; 3) one of the two calls at issue began with a pause; and 4) one of the two calls at issue referenced Medicare when Plaintiff is not a Medicare recipient. Plaintiff admits that she does not know which individual or individuals placed the calls at issue, let alone the technology they used to place the calls. Based on these allegations, Plaintiff cannot adequately allege that the caller(s) used a random or sequential number generator as required by the Supreme Court's recent decision in *Facebook v. Duguid*.

WHEREFORE, Bandwidth respectfully requests that the Court grant its motion, dismiss Plaintiff's Third Amended Complaint against it with prejudice, and award Bandwidth all other relief that the Court deems just and proper.

Respectfully Submitted,

**BANDWIDTH INC.**

By Counsel

/s/ Danielle Waltz

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**CERTIFICATE OF SERVICE**

I, Danielle M. Waltz, hereby certify that a copy of the foregoing “**BANDWIDTH INC.’S  
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**” has been served upon the  
following counsel of record, via the Clerk of the Court using the CM/ECF system and U.S. Mail, this 4th  
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/s/ Danielle Waltz

Danielle Waltz (WVSB #10271)